THE UNEQUAL APPLICATION OF THE CRIMINAL LAW.

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In practice the most fictitious of all our legal fictions is that which declares that all men are equal in the eyes of the law. Whether on account of the irony of fate or the blindness of justice the very technicalities and presumptions originally intended to place the poor, the friendless and the weak on a legal equality with the rich, the influential and the powerful, have been the most potent factors in destroying that equality—for it is the latter rather than the former who have been able to secure the benefits and advantages to be derived therefrom.

The law guarantees to every one charged with a crime a speedy and impartial trial, presuming (often violently it must be admitted) that the accused is "not guilty," and will be ready and anxious to establish his innocence. If the accused be poor or friendless or without influence, he usually gets what the law is supposed to guarantee to all alike—and if guilty the jury, as a rule, so finds without delay and the court hastens to impose and inflict the penalty of the violated law. But, on the other hand, if the accused has money, friends, position or influence in his behalf the weight of all is brought to bear. Adroit and skillful (I will not say unscrupulous), counsel are employed, continuances from term to term are secured, and all the advantages to be derived from the law's delay are obtained, while the accused (except in capital cases) remains at liberty under a bond procured by the same money, friends and influence. Yet a poor and friendless man, though he may be an associate, charged with the same offense, for the lack of the same bond would be languishing in jail awaiting the trial. Whilst the processes of the law are thus retarded and the trial delayed, witnesses essential to conviction may die or remove beyond the jurisdiction of the court, the facts and circumstances of the crime become faint in the memory of others, the zeal or the patience of the prosecutors becomes exhausted, and when at last the day of trial arrives a verdict of "not guilty" will be rendered by a jury selected or accepted by attorneys for the defense, so far as practicable, for the stupidity or ignorance

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of its members or other characteristics desirable from the viewpoint of the accused, rather than for education, intelligence and capacity to properly weigh the law and the evidence in the case.

Even though by chance or an honest discharge of duty, a verdict of guilty is rendered, if the accused has money, or influence, or friends, his case is appealed to the Supreme Court of his State. In the Supreme Court (and I make the statement with due respect and without criticism of any court or any judge), owing to our peculiar system of jurisprudence which is built upon precedent, the accused and the circuit judge are practically tried together upon the record, and if the judge is found guilty of any error in the law of the case, the verdict of guilty found on the facts by the jury is reversed and the case is remanded for a new trial which usually means an acquittal of the accused. And, under our peculiar system this reversal is had on errors in law, even if notwithstanding these errors the verdict of the jury on the facts appears to have been correct—the presumption being that the jury may have been influenced and the rights of the accused prejudiced by those errors, however trivial they may have been.

But it is in the infliction of penalties that we find the most glaring inequalities in the application of our criminal laws. Most misdemeanors are punishable with fine or imprisonment, in the alternative. Usually the fine is imposed (except in aggravated cases or where the accused is especially low in the social scale), the defendant being committed until the fine and costs are paid. The offender with money or friends pays his fine and is released; the defendant without money or friends serves the jail sentence. Even where the offender whose means are small manages to pay his fine and costs the hardship upon him is much greater than where the same fine is imposed upon one with greater ability to pay. Yet how seldom, in considering the degree of punishment to be inflicted and the amount of fine to be imposed, does the magistrate think of the ability of the accused to pay. The imposition of a fine of five dollars on one man may be a more severe punishment than a fine of five hundred dollars on another. The only means by which an equality of punishment in cases of misdemeanors can be secured is by so altering our penal statutes as to abolish fines altogether and to impose jail sentences only. Then all men will truly be equal in the sight of the law; the millionaire on his joy ride with the truck driver who exceeds the speed limit; the wealthy sport who gambles in his club with his poorer who does likewise in a poker den or throws the dice in a game

of craps; the rich bully who draws his concealed weapon in a gilded saloon, with the tough who does likewise in some humbler den of vice; the debauche who raises a "rough house" in a brothel with the degraded inmates, who usually alone respond to the charge; the voluptuary who supports a mistress in luxurious ease with the sensual wretch of lower station and slimmer purse who may be called with him to answer the charge of unlawful co-habitation. It is just as easy (or just as hard, if you prefer) for one man as another to go to jail; it is not just as easy for one man as another to pay a fine.

Again we find an illustration of my proposition in the disproportion of the punishments inflicted upon offenders of high and low position for offenses of great and small degree though of the same character. Although there are exceptions to this as to all rules, still it is usually the case that the man who steals a hundred dollars is condemned as a thief and receives the extreme penalty of the law, while he who steals a hundred thousand or a million of funds placed in his hands as a sacred trust by those who had confidence in his integrity, is pitied as an unfortunate speculator, and if punished at all has all the rigors of his confinement mitigated, lives in his prison almost as if in his home (saving the right to go as he pleases), or compromises with those whom he has robbed and is never brought to trial. The thief who steals a horse is convicted and sent to the penitentiary; the thief who by chicanery and sharp practice freezes out his fellow-stockholders and steals a railroad is a Napoleon of finance. A poor workman who in a fit of anger or intoxication kills another is sent to the electric chair or the gallows; a New York millionaire murders a fellowman and is at the most sent for a while to the asylum for the dangerous insane at Matteawan. The Sugar trust with false weights manipulates by its hired servants defrauds the national government out of millions; but only the hired tools are punished, while the guilty millionaires buy immunity by the restitution of a small portion of their ill-gotten gains.

Besides the accused, there is another party interested in the administration of criminal justice and especially in the "unequal application of the criminal law;" that party is the general public, the people. If the building up of artificial and technical safeguards to protect against injustice those accused of crime has redounded chiefly to the advantage of criminals of wealth and influence, it is likewise true that justice also constantly miscarries in the acquittal of many criminals of all classes and especially those guilty of crimes

of violence. This is an unequal application of the criminal laws by which all the people represented by the state suffer; for they are entitled to the protection of the law and the punishment of the guilty. And most of all does the voice of injured innocence cry aloud for that impartial administration of justice which the law in its letter contemplates but which courts and juries so often fail to give.

"The unequal applications of the criminal law," to which I have so far called attention are not local nor confined to any particular section but form a crying evil in all portions of our common country. There is, however, another phase of my subject the illustrations of which are to be found chiefly in our southern section. The illustrations already given are the result of the natural weakness of human nature coupled with the defects and imperfections in our criminal law and practice; those to which I shall now refer are racial.

From information gained from those who lived prior to the Civil War and from a reading of treatises on the ante-bellum slave laws and the practical application thereof, together with personal observations and the frequent reports contained in current newspapers, I feel warranted in saying that a negro accused of a crime during the days of slavery was dealt with more justly than he is today. Also, that prior to the Civil War a white man guilty of the murder of a negro was far more likely to be found guilty and to receive the penalty of the then existing law than is a white man who would commit the same offense today.

I think I may even go further and correctly state that it is next to an impossibility to convict even upon the strongest evidence any white man of a crime of violence upon the person of a negro. Some jurors, if not the whole jury, in such cases will always be found ready to respond to that favorite plea of attorneys defending the guilty criminals, the plea that there is a "reasonable doubt," a plea which more often than any other produces travesties upon justice, and which for every innocent defendant protected turns loose on the public a thousand guilty criminals. I have even heard attorneys make the appeal to a jury that no white man should be punished for killing a negro. I have seen men whose known and expressed sentiments were such as to render them unfit for the service, sitting on juries where the life and liberty of a negro were at stake, after having sworn on their *voir dire* to give that fair and impartial trial which their mental bias and ineradicable views absolutely precluded them from giving.

And the converse is equally true, that it is next to an impossibility to acquit a negro of any crime of violence where a white man is concerned. In such cases in practical effect the whole theory of the law is reversed; the state does not have to prove guilt beyond a reasonable doubt; the accused has to prove his innocence beyond all doubts. The state does not have to overcome the presumption of innocence; the accused has to overcome the presumption of guilt.

Even in cases where no white man is concerned, where all parties, both accusers and accused are negroes, the same racial prejudices in the minds of white juries in practical effect lead to a reversal of the presumptions of innocence and of the burden of proof, no matter how clearly and correctly the law may be stated by the court. It is to the impassioned appeals of the prosecuting atorney that the jury lends its ready ear, rather than to the judicial declaration of the court.

Now I am not a special pleader nor an apologist for the negro, but I am a most earnest advocate for an even handed justice, for an equal application of the law to all men who are subject to the law, be they Caucasian or African, native born citizens or foreign born subjects. I am an advocate for justice for its own sake and as a matter of principle; and also because the administration of injustice under the color of the law will react upon us, the white people of the South, in whose hands are the reins of power, and upon whom God in his wisdom has placed the responsibility of administering the law fairly and impartially to all.

Without further multiplying examples and illustrations, let us now ask ourselves whither are we drifting; who do the years to come hold in store for our nation; what may we expect from continued unequal application of the criminal law, and what lessons for the future may we learn from the experience of the past? When St. Paul in metaphorical phrase declared "Whatsoever a man soweth that shall he also reap," he announced a principle that pervades all law, both human and divine and which is applicable alike to individuals, communities, states and nations. And we cannot either as individuals, as a county, as a state or as a nation continue to mete out one kind of criminal justice to a poor man, a friendless man, or a man of a different race and other kind of justice to a rich man, an influential man or a man of our own race without reaping the consequences.

A failure to administer the same measure of justice to all alike certainly produces in the minds of the masses a disregard for the

forms of procedure and a lack of respect for the majesty of the law, and a contempt for its officers. It is unquestionably responsible to a very great extent for the prevalence of lynch law. When a community from long experience knows that in the majority of cases a murderer with friends, money and influence and a good criminal lawyer is likely to be acquitted, no matter how black his heart or how cold-blooded his deed, it is but a question of time when the people, the primal source of power and from which all governmental authority springs, will snatch from the hands of their unworthy agents and take back to themselves the delegated authority long enough to administer a swift and fearful punishment upon some guilty wretch regardless of the forms of law. The unequal application of the criminal law without regard to the right of the people to receive protection and in such a manner as to result in the virtual legal protection of the criminal classes is undoubtedly accountable for the increasing prevalence of certain crimes in America; undoubtedly accountable for the fact that the per centage of murders to our population is greater even in the United States than in the Czardom of Russia; undoubtedly responsible for the cheapness of human life in our great cities and for the fact that in many of our rural communities a man is more apt to be punished for stealing of a horse than for robbing a fellow man of his life.

Worse still in its results must be the reflexive influence upon ourselves of the administration of one kind of criminal justice to one man and of a different kind to another—and this comes most nearly home to ourselves in our application of the law to the negro. If our present course is persisted in we may for a while preserve the forms of law and procedure, but the living spirit of the law will soon take its flight and leave us the dead form alone. It will be but a question of time when we will unconsciously act upon (even if we do not acknowledge) the principle that the criminal laws are made for the negro only and not for the white man, and soon we will become a lawless people, having no regard for the legal rights of person or property of others. Indeed this state of affairs at times has already appeared to exist in some parts of the South and who can say but that I may have indicated the cause of that unfortunate state of affairs.